APPENDIX A

Trading With the Enemy Act, 50 U.S.C. App. § 9

§ 9. *Claims to property transferred to custodian; notice of claim; filing; return of property; suits to recover.*

(a) Any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or

the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act [sections 1-6 and 7-39 of this Appendix] and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

(Oct. 6, 1917, c. 106, § 9, 40 Stat. 419; July 11, 1919, c. 6, § 1, 41 Stat. 35; June 5, 1920, c. 241, 41 Stat. 977; Feb. 27, 1921, c. 76, 41 Stat. 1147; Dec. 21, 1921, c. 13, 42 Stat. 351; Dec. 27, 1922, c. 13, 42 Stat. 1065; Mar. 4, 1923, c. 285, § 1, 42 Stat. 1511; May 7, 1926, c. 252, 44 Stat. 406; Mar. 10, 1928, c. 167, §§ 11-14, 20, 45 Stat. 270-273; Aug. 24, 1937, c. 745, 50 Stat. 748.)

APPENDIX B

Oral Ruling of the District Court (Pine, J.) on Motion for Injunction

"THE COURT: (Pine, J.) Well, gentlemen, it appears from the papers before me that the Attorney General proposes to invite bids for the purchase from him of approximately 427,000 shares of Common A stock and 1,540,000 shares of Common B stock of G.A.F. and, if satisfactory bids are received, to sell the stock.

The Attorney General is the record holder of approximately 91 percent of the outstanding Common A shares and 100 percent of the outstanding Common B shares. The bids will be opened April 23, 1957. That is little more than a month from today. Injunctions have been sought by the plaintiff Interhandel and by certain plaintiff intervenors, generally referred to as the Kaufman group and the Attenhofer group, to enjoin the defendant from proceeding with the proposed sale. I have no doubt that, either way I decide, an appeal will be taken to the Court of Appeals and an effort will be made to take the matter to the Supreme Court.

This view is based upon past experience with this protracted and extensively litigated lawsuit. It is therefore necessary, in the interest of justice, that I act as promptly as possible in order that these appeals may be taken, heard, and disposed of, if possible, prior to the date of the opening of the bids. The motions and briefs were submitted to me as they were filed and I have had an opportunity to read and consider them prior to this hearing and I have had the advantage of the extensive oral arguments and I am ready to rule. I read the briefs in advance in order that I might be able to act promptly and rule promptly.

The plaintiff intervenors' rights are limited by the Kaufman decision to an interest in the assets proportionate to their stockholdings. It appears that they represent only approximately 15 percent of the stockholdings of Interhandel. Under the bar date order, no stockholders other than those who intervene are permitted to receive any benefit from any judgment. Defendant plans to sell only 75 percent of the Interhandel vested stock of G.A.F. whereas the maximum recovery by the intervenors cannot exceed 15 percent of this Interhandel claimed G.A.F. stock. Defendant is therefore proposing to sell stock, an interest in which under no circumstances could be claimed by the plaintiff intervenors, and I reach this conclusion as to his right to sell on either the individual theory or the derivative theory.

I cannot subscribe to the theory of the intervening plaintiffs that they are entitled to a fractional interest in all the stock, or to the basis of their claim for all the vested property less only so much as is proportionate to the enemy stock interest. That theory might give the plainiff intervenors something to which they are not entitled, namely, an interest in the nonenemy stock which, for some reason, has not been claimed. While the proportionate amount ultimately to be returned to the intervening plaintiffs has not been determined and will not be determined until each claim has been finally decided, the maximum amount that can be recovered has been determined by the claims filed before the bar date and that is amply secured by the retention by defendants of the 25 percent not offered for sale.

When I spoke of maintaining the status quo in my opinion in relation to the injunction to forbid the reclassification of the stock, of course, as that opinion will show, it related to the status quo or integrity of each and every share of stock including those in which the plaintiff intervenors claimed an interest. In my opinion, that interest would have been injured by the total reclassification. No such situation exists here as the proposed sale is only to sell that stock in which intervening petitioners have no interest.

Now, so far as the motion for an injunction by Interhandel is concerned, I am of the opinion that it is not entitled to an injunction from this Court because final judgment has been entered herein and plaintiff lacks standing; and, also, this Court has no jurisdiction to issue it.

In the injunction proceeding last fall for reclassification of the stock, it was not necessary to decide this point because the full relief sought was given at the instance of the plaintiff intervenors. Here it becomes necessary to decide the point because the plaintiff intervenors, as I have stated, are not entitled to the relief sought and I decide that Interhandel is not entitled to an injunction from this Court on the present record.

The pendency of a counter claim has no application to rights given under Section 9(a). Counsel will submit, with all due speed, findings and conclusions in accordance herewith."

Oral Ruling of the District Court (Pine, J.) on Motion for Rehearing

"THE COURT: I am of the view that the critical date, the basic date, the date, when the interest of these intervenors was fixed and their rights were fixed, was at the time of vesting in 1942.

I am also of the opinion that the preferred stock should be considered and counted.

I approve of the method of reducing it to 20 per cent.

I do not see any basis for considering that the stock of Chemie in the portfolio of G.A.F. is treasury stock of Chemie.

I am of the opinion that if the intervenors are entitled to the increment on the vested property it can not relate back to increase their proportions. But apparently, even if it does, from the way the figures have been presented to me, the percentage of interest in Chemie of the intervenors is below 25 per cent."

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13822

ERIC G. KAUFMAN, et al., APPELLANTS,

v.

HERBERT BROWNELL, JR., Attorney General of the United States, et al., APPELLEES.

No. 13823

ERNEST ATTENHOFER, et al., APPELLANTS,

v.

HERBERT BROWNELL, JR., Attorney General of the United States, et al., APPELLEES.

Appeals from the United States District Court for the District of Columbia

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Decided June 20, 1957

Mr. Robert E. Sher, with whom *Messrs, Isadore G. Alk* and *James H. Heller* were on the brief, for appellants in No. 13822.

Mr. Edmund L. Jones, with whom *Mr. C. Frank Reifsnyder* was on the brief, for appellants in No. 13823.

Mr. David Schwartz, Attorney, Department of Justice, with whom *Messrs, George B. Searls, Paul E. McGraw, Sidney B. Jacoby* and *Ernest S. Carsten*, Attorneys, Department of Justice, were on the brief, for appellees.

Before WILBUR K. MILLER, FAHY and DANAHER, *Circuit Judges.*

DANAHER, *Circuit Judge:* These are consolidated appeals lodged by two groups of intervenors in the corporate action commenced in 1948 by Societe Internationale, a Swiss corporation, formerly called I. G. Chemie, but now commonly known as Interhandel. Commencing in February 1942, the Attorney General or his predecessors issued a series of vesting orders by which, under the Trading with the Enemy Act,[1] the Government had seized some 93% of the stock of General Aniline & Film Corporation (hereinafter called GAF), said to have been the property of foreign nationals or owned by or held for I. G. Farbenindustrie A.G. of Germany. Background facts in substantial measure may be gleaned from our opinion in *Societe Internationale, Etc.* v. *Brownell.*[2] In the latter action, the Kaufman group was permitted to intervene,[3] after which the Attenhofer group was also allowed[4] intervention over the opposition of the Kaufman group. In all, some 2,488 stockholders intervened; the complaints of 720 were dismissed; and the remaining 1,768 stockholders own a total of 41,683 shares, found by the District Court to represent 15.439% of the total outstanding stock of I. G. Chemie at the date of vesting. When the Attorney General announced on February 21, 1957, a proposed public sale of 75% of the shares of the vested GAF stock, appellants sought to enjoin the sale of any of the vested shares. Judge Pine denied motions for an injunction,

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[1] 40 STAT. 411, as amended, 50 U.S.C. App. §§ 1-40 (1952).

[2] 96 U.S. App. D.C. 232, 225 F. 2d 532 (D.C. Cir. 1955), *cert. denied*, 350 U.S. 937 (1956); and see Societe Internationale, Etc. v. Brownell, Nos. 13460 and 13527 (D.C. Cir. Apr. 11, 1957).

[3] Kaufman v. Societe Internationale, 343 U.S. 156 (1952).

[4] Following the District Court's order, motion for leave to file petition for a writ of mandamus was denied, Kaufman v. Pine, 344 U.S. 891 (1952).

and after appellants had moved jointly for rehearing, the District Court on March 15, 1957, made findings of fact and conclusions of law with respect to both motions for injunction and joint motion for rehearing. The same day two orders were entered denying all motions and these appeals followed.

Appellants in the Kaufman group claim, in effect, that theirs is a corporate derivative action which entitles them ultimately to the return of "the innocent proportion" of the vested assets and that such portion may well exceed 80% of the vested property.

Appellants in the Attenhofer group claim that the District Judge misconstrued the decision of the Court in *Kaufman* v. *Societe Internationale*, erred in holding that the various appellants represent only themselves and not all non-enemy stockholders of Interhandel, and further, briefly, erred in holding that retention of 25% of the vested stock is sufficient in view of the respective claims.

Both groups insist that § 9(a) of the Trading with the Enemy Act[5] requires that *all* vested property here involved "shall be retained" by the Custodian once suit is brought and until final judgment. Without our particularizing as to further details of the grounds upon which reversal is sought, we turn to the *Kaufman* case which we deem controlling.

The Court pointed out, as it supplied the background upon which intervention was permitted, that petitioners "admitted the right of the Custodian to retain an interest in the seized assets proportional to the stock ownership of enemy stockholders."[6] Thus the question was, said Mr. Justice Black, "What *part* of the assets of a corporation organized under the laws of a neutral country may the Custodian retain where *part* of the corporate stock is

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[5] *Supra* note 1, 50 U.S.C. App. § 9(a).

[6] 343 U.S. at 158.

owned by enemies, *part* by American citizens, and *part* by nonenemy aliens?'"[7]

The answer, in paraphrase, ran to the effect that all corporate assets may be seized, whereupon consideration must be given to the plight of innocent stockholders whose innocent interests are not required to be confiscated. Accordingly,

> "Our holding is that when the Government seizes assets of a corporation organized under the laws of a neutral country, the rights of innocent stockholders to an interest in the assets proportionate to their stock holdings must be fully protected. This holding is not based on any technical concept of derivative rights appropriate to the law of corporations. It is based on the Act which enables one not an enemy as defined in § 2 to recover any interest, right or title which he has in the property vested. The innocent *stockholder* may not have title to corporate assets, but *he* does have an interest which Congress has indicated should not be confiscated merely because some others who have like interests are enemies."[8]

The Kaufman petitioners there had attacked the position of the corporation, Interhandel, which sought return of "all its assets" on the theory they would suffer if "whatever return is obtained must be divided among enemy and nonenemy shareholders in proportion to their stock holdings."[9]

The Government, agreeing with the position of the corporate management, argued that if nonenemy stockholders were to be given any standing, they should be limited to individual suits for money judgments against the Custodian. "Petitioners claim a proportional right or inter-

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[7] *Ibid.* (Emphasis supplied.)

[8] 343 U.S. at 159-60. (Emphasis supplied.)

[9] *Id.* at 160.

est in the specific assets of Interhandel . . . ."[10] Having so taken account of the respective arguments, and permitting maintenance of the corporate action, the Court then cut through the "corporate veil" and allowed—*in that corporate action*—the "nonenemy stockholder *in his own right* [to] . . . assert *his* nonenemy character in order to protect *his own interest* from the enemy taint caused by other stockholders."[11]

To us the Court is speaking clearly, succinctly and positively. To avoid multiplicity of actions by thousands of individual shareholders, a corporate action may be brought as one had been brought. In that action an individual stockholder might intervene, and on the basis of his own entitlement, his individual right might be asserted. If he could not prove his right, that ended the matter, but at least he might intervene to show his own nonenemy character. Thus, the petitioners, represented then by the Kaufman group, were allowed to intervene over the strong dissent which saw the majority permitting a friendly stockholder to withdraw his contribution to the funds of the corporation.[12]

We are no longer concerned with the problem of a corporate recovery, for the corporation's suit has been dismissed.[13] We thus conclude as did the Court, that each innocent nonenemy stockholder[14] permitted to intervene in the corporate suit, has a "severable interest in corporate assets seized by the Custodian . . . ."[15] When his right is established and the extent of that severable interest is

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[10] *Id.* at 161.

[11] *Ibid.* (Emphasis supplied.)

[12] 343 U.S. at 168.

[13] *Supra* note 2.

[14] Fritz von Opel v. Brownell, —— U.S. App. D.C. ——, —— F. 2d ——, No. 13265 (D.C. Cir. May 23, 1957).

[15] 343 U.S. at 161.

shown, the courts have "adequate equitable power and procedural flexibility to protect all interests,"[16] including that of the Government.

Section 9(a) of the Act provides that when the court in an equity action finds an individual claimant's interest has been established, it shall order the "payment, conveyance, transfer, assignment, or delivery . . . of the money or other property . . . or the interest therein to which the court shall determine said claimant is entitled;" not the property or interest therein of some *other* claimant, or even of all claimants similarly situated, but of that to which "*said claimant*" is entitled, as established in the suit he instituted. "[S]uch money or property" commanded to be retained pending final judgment or decree can only be that to which claim is made by the claimant authorized by § 9 to institute the action reflecting his own "severable" right.

It follows that the intervenors here were not entitled to enjoin the sale of assets aggregating in value some $100,000,000 pending ascertainment (1) of their right and (2) the extent of their respective interests following the establishment of their severable rights.

But, it is argued, the District Court in any event erred in finding that the interests of the intervening groups did not exceed 25% of the vested assets, indeed that it was error to find such interests amounted to only 15.439% of the total outstanding stock of I. G. Chemie at the date of vesting. We cannot say the District Court abused its discretion or otherwise erred in retaining 25% of the vested assets to answer to such claims and interests as shall be established.

Affirmed.

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[16] *Ibid.*